

George and Deborah Cardoza
74 Highland Ave.
Portsmouth, RI 02871

19 July 2023

Zoning Board of Review
Portsmouth Town Hall
2200 East Main Rd.
Portsmouth RI, 02871

Dear Members of the Zoning Board,

We are writing in opposition to the AP Enterprise, LLC request for a Special Use Permit for an outdoor recreation facility on the Portsmouth Landfill.

I am a life-long resident of Portsmouth and have served this community on various committees, granting me first-hand knowledge of the information I am about to share in my letter to the Zoning Board of Review. My husband George and I have owned our properties at Map 20, lot 12 (our home), which directly abuts the landfill and Map 20, lot 12B, also in the abutter's area, since 1999.

First, it is important for this Board to understand the background of this project and why this community is alarmed.

The Rhode Island Department of Environmental Management (RIDEM) originally approved capping of the landfill with two feet of clean fill. However, Arthur Palmer had a different approach and wanted to accept payment for deposits of soil with elevated levels of Arsenic.

"The Department's Landfill Closure Program became involved with the site in 2003 when Art Palmer (owner of AP Enterprises "APE") approached the Department about his desire to acquire the site. His original plan was to clean up the site and create a recreation volleyball facility at the site. AP Enterprises has since decided to no longer develop a volleyball complex." – DEM March 11 2011 agreement.

A Public hearing was required, so a small ad was placed in the Providence Journal (not in any local papers) to announce a Public Hearing to change the Beneficial Used Determination (BUD). This was done at the end of December of 2010, when most citizens were away or engaged in the Holidays. As a result, the required response of 7 days had passed before knowledge of the hearing was generally known.

The Town Council conducted a Public Hearing on January 18, 2011, after hearing about the change to the BUD without their notification. With this fundamental change in the BUD, the site was to have a shocking and suffocating eight feet of soil with up to 40 ppm concentrations of arsenic. These deposits of high arsenic soil were approved for a densely populated residential area. The January 18 public hearing produced a packed meeting with attendees overflowing Council chambers into the parking lot and streets by an outraged, alarmed community.

Attending the meeting were also the Town Council, Town Planner, all other Town Officials, our Representatives and Senator, and Mr. Mark Dennen, representing DEM.

Everyone, clearly objected to this hazardous approach that ran late into the night documenting our concerns and questions, with a recording stenographer.

RIDEM refused to return and face the town again while the Department of Health refuse all comment except to state concerns with air borne dust and contaminated soil ingestion.

Then Town Administrator, Robert Driscoll, sent this property to the Open Space Committee for consideration as open space. This property met all the criteria but our concerns where it was a contaminated site. This property went forward to the Council and the Council voted to offer Arthur Palmer \$500,000 toward clean fill if the property stayed as Open Space.

On March 11, 2011 AP Enterprises entered into an agreement with DEM to accept up to 40 ppm of Arsenic and place his property in an (ELUR) Environmental Land Usage Restriction, recorded on his deed and in Land Evidence at Town Hall. Book 1476 pg. 251. The contaminated soils were continuously delivered over the next seven years, and possibly longer.

As acting chair of the Landfill Committee, along with Larry Fitzmorris, of the Portsmouth Concerned Citizens and other citizens, a number of complaints were made to the Department of Environmental Management. These submissions to DEM were intended to resolve the issues of foul odors of sulfur, petroleum and blowing of contaminated dust covering our properties, roads, cars, inside and outside our homes and our person over the years by operations at the landfill. (Note: please see the attachments)

Our personal concerns: I would like to address the absolute hell we have experienced over the years as abutters. We purchased our property, at 74 Highland Avenue, which is approximately two acres, from Mr. Kidd in 1999 with plans to build our home and a place for our horse.

Dust: The past years, were unbearable and we almost lost our lead framer because of the overwhelming suffocating dust that covered our property from the 10 wheelers running back and forth on and off the site all day and at times and close into the night. Understandably, our framers refused to work in these conditions, so our project was held up, months at a time. It took us six years to complete our home! In other words, there were months when we could not access or use our own property. Over time, both my husband and I developed a chronic cough, his lasted two to three weeks. My coughing continues and now I am under a doctor's care for respiratory problems.

AP Enterprise site fence: It is AP Enterprises' responsibility and required by DEM to enclose his property and maintain his fencing. However, I can't tell you how many times the fence fell or leaned onto our property. It took three of us to wrestle the 8' chain link and secure it in place. That was exhausting. So, we gave up. There are still sections of fencing that have been down for years.

Noise: This proposed beach volleyball business would have an ADVERSE IMPACT on us while reducing our QUALITY of LIFE. The constant noise, at every waking minute from daylight to sunset for 8-9 months of year is UNACCEPTABLE! 14-15 hours of noise all day from these activities would rob us of our peace and quiet, a necessity for health and wellbeing.

As a member of the Island Park Enhancement Committee, I worked with committee members and several entities at great expense to enhance this area with new roads, sidewalks, Victorian lights and Park benches for a quiet and restful place to reflect while overlooking the water. AP Enterprise's facility will diminish our efforts and CHANGE the CHARACTER of this area and have an opposite effect. This kind of facility does not belong in a residential area. The best use of this property is to be adopted as Open Space, and let it return to nature.

On May 8, 2016 Mark Dennen of DEM, Council member Liz Pedro, Town Planner Gary Crosby, along with RhodeIsland Senator John Pagliarini, including AP Enterprises and their environmental engineer toured the fifteen-acre site and discussed the best use of the property.

After our tour, and informal meeting was made with then DEM Director Janet Coit and Senator John Pagliarini, their determination was that the best use of the property was passive open space.

For many reasons this site is suitable for only passive Open Space and should be preserve as Open Space, for reasons of Public Health, Safety, Environment Protection and Wildlife Habitat.

In reference, to the criteria for the Special Use Permit, it is in my judgement he fails all that apply to the Island Park landfill.

Respectfully,

George and Debra Cardoza

Special Use Permit Criteria

Items to be considered when granting a special use permit include, **but are not limited to**, the following:

a) The desired use will not be detrimental to the surrounding area;

The Outdoor Recreation facility will be a constant public and private nuisance. Crowds exceeding 500 will be detrimental to the surrounding area.

b) It will be compatible with neighboring land uses;

No, it will not be compatible with the surrounding land use which is residential with quiet storefronts, which are located along Park Avenue only. The proposed facility will be disturbing in increased crowds and noise.

c) It will not create a nuisance or a hazard in the neighborhood;

Yes, this will create a constant public and private nuisance and will be hazardous at this location with parking on both sides on Park Ave with pedestrians, bikers, joggers and beach goers. It will add to what is already a dangerous concentration of people.

d) Adequate protection is afforded to the surrounding property by the use of open space and planting;

No protective screening or fence will be adequate for protection because of the elevation of this site. No Open Spaces provided.

e) Safe vehicular access and adequate parking are provided;

No, there is only one narrow access to the property on Park Avenue and it is a dangerous situation. Parked vehicles around that entrance can be hazardous from what I have seen and experienced.

There is NOT adequate parking overflow onto the grass near homes and Park Ave and Mason Avenue will be problematic.

f) Control of noise, smoke, odors, lighting and any other objectionable feature is provided;

Noise from the sound system, coupled with all day activities, fumes from the buses and vehicles on an elevated berm fifteen feet above the surrounding homes bring carbon fumes at face level is health hazard. Lighting is a problem flashing on and off reacting to animals into nearby homes.

g) Solar rights of the abutters are provided for;

Not applicable.

h) The proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth;

This type facility with 100 or so daily attendance and events over 500 in a densely populated residential area is not in compliance with the Comprehensive plan.

i) The health, safety and welfare of the community are protected;

The noise, dust, BYOB, traffic congestions are all serious concerns that do not afford protection for families in this surround area.

i) It is consistent with the Purpose of Design Standards set forth in Article IX. Section D. and, for developments within the Town Center District, the purpose of that district as expressed in Article III;

[Added 10-27-2004]

Not applicable

**DEPARTMENT GENERAL RESPONSES TO COMMENTS RECEIVED
FOR THE LICENSING OF THE APPLICATION TO MODIFY THE
BENEFICIAL USE DETERMINATION OF 9/20/2010**

REGARDING THE FORMER PORTSMOUTH TOWN LANDFILL

March 2011

Rhode Island Department of Environmental Management

Former Portsmouth Landfill

Oversight Plan for Acceptance of Amended BUD Material Containing Naturally Occurring
Elevated Levels of Arsenic Above 7 mg/kg
March 2011

The former Portsmouth Town Dump, also known as the Island Park Landfill, is a privately owned 18 acre site, 14 acres of which was leased as a landfill between 1954 and 1974 by the Town of Portsmouth. The Department's Landfill Closure Program became involved with the site in 2003 when Art Palmer (owner of AP Enterprise "APE") approached the Department about his desire to acquire the site. His original plan was to clean up the site and create a recreational volleyball facility at the site. AP Enterprises has since decided to no longer develop a volleyball complex.

A.P. Enterprises submitted an initial BUD Application in August 2010 requesting to accept soils that were above the Rhode Island Department of Environmental Management's Residential Direct Exposure Criteria and below the Industrial/Commercial Direct Exposure Criteria. The proposed soils would be used for grading and shaping of the landfill contours prior to placement of the final cap.

In December 2010, AP Enterprises submitted a request to modify the Beneficial Use Determination Approval. The proposal is to accept, in addition to other soils already approved, soils containing naturally occurring arsenic above the RIDEM Direct Exposure Criteria of 7 mg/kg (ppm), with an average arsenic level below 20 mg/kg and a maximum level of 40 mg/kg.

Due to public concern and comments received at the January 18, 2010 public hearing and subsequent public comment period, the Department has developed the following Oversight Plan for the Former Portsmouth Landfill. The Department will execute the plan while acceptance of soils containing Naturally Occurring, Elevated Arsenic Levels occurs at the Site.

- The Department will conduct **unannounced** site visits and inspections on a regular basis. The frequency of the site visits and inspections will be based on the progress taking place at the site and the amount of soils that are being brought to the site.
- The Department will verify that the naturally occurring, elevated levels of arsenic soils are covered by six (6") inches of soil containing less than 7 mg/kg of arsenic within fourteen (14) days. If the soils are not covered within the fourteen (14) day time frame, AP Enterprises shall establish and maintain an escrow account and deposit monies into the escrow account on a two (2) dollar per ton basis.
- The Department may collect samples for analysis, if deemed necessary, of any materials received at the site.
- The Department has placed a condition in the BUD Amendment approval limiting delivery of soils containing elevated, naturally occurring levels of arsenic to occur

between the hours of 7:30 am and 3:30 pm, Monday through Friday.

- AP Enterprises shall submit quarterly updates to the Department with the following information:
 - A) Name, address, and quantity received of each source of material
 - B) An explanation and photographs of construction activities and sedimentation control measures that have been done at the site
 - C) Sampling that has been done on material received
 - D) An explanation of any complaints that have been received
 - E) An updated schedule of timelines to completion of project

Elevated, Naturally Occurring Arsenic Soil Handling Plan

AP Enterprise LLC ("APE") shall give the Rhode Island Department of Environmental Management ("RIDEM") advance notice of all elevated Arsenic soils to be received at the Former Portsmouth Municipal Landfill ("Landfill") under this BUD amendment. The notice shall include all laboratory test data provided to APE by the soil suppliers and copies of all approval documentation submitted by the soil suppliers to APE as part of APE's contractual requirements for acceptance of soils at the Landfill. The notice shall also identify the locations of generation and all data pertinent to acceptance.

Within 14 days of APE receiving elevated Arsenic soils from a particular source covered by this BUD amendment, APE shall submit to RIDEM a drawing showing the location(s) where the elevated Arsenic soils have been placed. APE shall simultaneously submit a statement declaring that the soils have been properly covered by 6 inches of soils meeting the Industrial Direct Exposure Criteria. Alternatively, APE shall be required to establish and maintain an escrow account and deposit in that account an established dollar amount per ton of soils received under this BUD amendment. The escrow funds shall remain in the account until the soils received under this BUD amendment are covered as set forth above. At that time, the escrow funds shall be released to APE. The amount per ton required in the escrow account shall be determined by RIDEM in its reasonable discretion, but shall not exceed \$2 per ton.

APE will place the soils in areas of the Landfill which will be clearly defined in the drawing submitted to RIDEM in a grid pattern using stakes as boundaries to the areas. The stakes will be labeled at 6 inches and 12 inches above elevated Arsenic soil grade as a guide to verify a minimum of 6 inches cover. In the case of large shipments of elevated Arsenic soils, APE will report the receipt of these soils to RIDEM periodically and often enough to ensure that no elevated Arsenic soils remain uncovered for more than 14 days. In all cases, if the elevated Arsenic soils are not covered within 14 days of receipt, the escrow account alternative shall be initiated.



**Rhode Island
Department of Environmental Management**

235 Promenade St., Providence, RI 02908-5767 TDD 401.222.4462

Certified Mail

Notice of Intent to Enforce (OWM/WFM # 317)

October 30, 2014

Mr. Arthur Palmer
AP Enterprises, LLC c/o David Peter
Site Redevelopment Technologies
18 Shoreline Dr.
Foxboro, MA 02035

SF Pacific LLC
C/O Barry T Mori
Lawrence Investments LLC
101 Ygnacio Valley Rd Ste 320
Walnut Creek, CA 94596

Dear Responsible Parties:

Enclosed please find a Notice of Intent to Enforce (NOI) issued to the AP Enterprises LLC and SF Pacific LLC (hereafter the *Parties*) regarding the Former Portsmouth Town Dump Landfill located on Plat 20 Lots 1,2,13 and Plat 25- Lot 2 in Portsmouth, Rhode Island, in connection with soils recently received at the site.

As is stated in the NOI, a written response is required within ten (10) days indicating your compliance with the required actions in the time frame indicated. While the Department is evaluating enforcement action regarding the materials, we feel immediate action is necessary as discussed below. Lack of action may result in additional enforcement actions.

Please contact Mark Dennen at (401)-222-2797, extension 7112 (email: mark.dennen@dem.ri.gov) if you have any questions concerning your responsibilities; however, communication in any form other than writing shall not be deemed a satisfactory response to this NOI.

Sincerely,

Laurie Grandchamp, Supervising Engineer
Department of Environmental Management
Office of Waste Management

Enclosure

CC: Terrence Gray, Assistant Director
Leo Hellested, Chief, OWM

Tracey Tyrrell, OCI
Tim O'Connor, Tim O'Connor Consulting

4. AP Enterprises LLC shall reimburse the Department for the sampling. A check for the amount of \$1,026.80 made payable to Rhode Island General Treasurer should be mailed to the Office of Waste Management.
5. AP Enterprises LLC shall submit a plan to the Department describing measures that will be instituted in order to prevent inappropriate material being accepted by the Landfill. Measures could include increased sampling frequency for acceptance of material or AP Enterprises conducts sampling of the material to confirm analytic results.

E. Assessment of Penalty

This Notice constitutes a notice of intent to issue a Notice of Violation and assess an administrative penalty pursuant to R.I. General Laws Chapter 42-17.6 for any violations and/or continued noncompliance. If the Parties promptly and satisfactorily comply with the requirements of this Notice, the Department may not assess an administrative penalty. As previously mentioned, the Department reserves the right to issue additional enforcement action. Failure to comply with the aforementioned items may result in additional enforcement actions as specified in the *Remediation* and *Solid Waste Regulations* that may be as high as \$25,000 per violation for each and every day that the violation continues to exist.

Within ten (10) days of receipt of this Notice, you must notify this office in writing of your intent to comply with the above-required actions in the time frame indicated.

FOR THE DIRECTOR

LEO HELLESTED, P.E., Chief
Office of Waste Management

Date: _____, 2014

----- Original message -----

From: "Sen. Pagliarini, John Jr." <sen-pagliarini@rilegislature.gov>

Date: 5/6/16 3:55 PM (GMT-05:00)

To: "Debra C." <firevision_3@hotmail.com>

Cc: ljfitz45@aol.com, vhoward17@cox.net, tom.grieb@gmail.com

Subject: Re: Landfill

DEM meeting me Monday 5:00

Sent from my iPhone

On May 6, 2016, at 3:52 PM, Debra C. <firevision_3@hotmail.com> wrote:

Thank you so much John, there has been transaction that Larry will fill you in. Passive open space in the densely populated area is desperately needed!

The residences are in NEED OPEN SPACE for health that only nature can give. It will also sustainable wildlife habitats that has tried to exist here.

Facts Points:

The Cardi property 125 ac Gated Park for bike path and trail along the salt marsh, was the negotiation with Alt and the Portsmouth Open Space Committee. In that agreement Cardi will clean up the property instead of development of "300"condos.

The Audubon Society says it's a nice wildlife habitat and refuge that should be preserved.

RIDOT owns 100' from the center of Boyds Lane (middle of the road). My negotiation with them, they will clean up the sides and replace the 75 yr old rushed bend up guardrail.

RIDEM issued a Notice of Violation(NOV) for dirty waters in this area. (Janet Coit, knows).

This same area would qualify for Federal Grants for clean up because of the Historical Old Orchard Grove.I have that contact.

The landfill as passive, Open Space! vs.

Private 7/days, - yr. round 7-11pm with regular audiences of 4,000 people with lights, traffic, noise, with a large septic system of constant operation would have a negative impact of this community.

This is absolutely insane!

ACTIVE is invasive and will rob the community of quality of life.

This has been a huge negative health and safety impact already over the for years and will, if this site is developed. Their will be no rest and no peace.

The noise will echo across the waters and neighborhoods.

The lot sizes are approximately 10,000 sq ft.

ALL open space projects have gone to the south side.

This area desperately needs open space and peace and exercise for a well balanced happy and health life!

Thank you so very much, John!

Sent from my Galaxy S@III

Subject: ★ **URGENT! Infestation of flies at the Portsmouth landfill**
Date: 7/14/2023 6:22:14 PM Pacific Standard Time
From: firevision_3@hotmail.com
To: ljfitz45@aol.com

----- Original message -----

From: "Debra C." <firevision_3@hotmail.com>
Date: 10/28/21 11:47 AM (GMT-05:00)
To: terry.gray@dem.ri.gov
Cc: rrainer@portsmouthri.com, Firevision_3@hotmail.com
Subject: URGENT! Infestation of flies at the Portsmouth landfill

Good morning -

This is to inform you of the complaints made to the Portsmouth Building Inspectors Office and our experience of the invasion of infestation a flies from the soil deposits of at landfill!

Those who live near the landfill have experienced an overwhelming infestation of flies.

Our house which abuts the landfill has been filled with an infestation of flies! We are talking about an invasion. It is disgusting and shocking!

These swarms of flies were around every window inside and out. They squeezed through our screens and filled our home.

We sprayed and vacuum them up only to return on Sunday and repeat the process!

We let a horse out to graze only to see she was swarmed with flies on her legs her face in seconds even after we sprayed her with fly spray. These flies are vicious!

Also, Terry, when my husband and I met with you in your office at the outset of this landfill, you promised the soils would not exceed 8 feet. Theses soils have exceed well over 12'!

We have not only dealt with dust, we could NOT BREATHE, the elevation levels of toxic arsenic, now massive infestation of flies that we cannot use our property! DO YOU UNDERSTAND! We have not right of enjoyment and use of our property!

There appears to be no local or state oversight! Please address this matter..thank you!

George and Debra Cardoza
74 Highland Ave.
Portsmouth, R.I. 02871
401-683-8110

Sent from my Sprint Samsung Galaxy S7.

I have forwarded this complaint to Mark Dennon at DEM.
Bob Driscoll

-----Original Message-----

From: Pam Benjamin [mailto:pam.benjamin@verizon.net]

Sent: Saturday, February 19, 2011 12:39 PM

To: Joseph W. Robicheau; Joseph W. Robicheau; Judi J. Staven; Personal - Michael A. Buddemeyer; Michael A. Buddemeyer; Keith Hamilton; Personal - Paul F. Kesson; Personal - Elizabeth A. Pedro; Personal - James A. Seveney; James A. Seveney; Robert G. Driscoll; Lance E.

Hebert; rayna.santoro@dem.ri.gov; larry.mouradjian@dem.ri.gov; terry.gray@dem.ri.gov; waterresources@dem.ri.gov; alicia.good@dem.ri.gov; gufugate@crmc.ri.gov; jwilis@crmc.ri.gov; mhirshberg@eastbaynewspapers.com; Johnson@NewportRI.com; Editor@NewportRI.com

Subject: Contaminated Soil Dumped in Island Park

I am writing with great concern regarding the contaminated soil that is being dumped in Island Park. Please consider this a formal complaint.

Today, the wind is blowing 40 knots and that soil is blowing in clouds across Park Avenue, pelting everyone that is walking by with children and pets, traversing over the sea wall mixing invisibly with the sandy Park Avenue Beach and certainly entering the water.

After working in the real estate field for a short time, I have experience with clients purchasing property that had been contaminated by chemicals and petroleum products. The mitigation process is typically very involved and expensive. I never dreamed the companies that carry out the mitigation did not have to follow strict rules on the disposal of the material. I am concerned what the arsenic will do to the fish, shellfish and sea birds, not to mention any beach goers. I am concerned about the benzene, which is known to cause acute leukemia. How is it possible they can dump this soil and leave it in piles uncovered, where children could play? Children will take no heed to the hay bails and ropes closing off the area. We have put our trust in the leaders of our Town and the leaders of the DEM and CRMC to protect us from undue harm, and I feel this trust is being forgotten and abused.

When this work began, Island Parkers were curious as to what was happening with the clearing of the area on Park Avenue. I tried to make a few calls to local news reporters and one was aware of this occurrence. Melanie Hirschberg from the Sakonnet Times had started researching and was surprised to find no information on the company performing the work, the trucks were all unmarked. This seems very unusual to me.

Why so secretive? How is it that the company can dump this contaminate on their private property less than 200 feet from a coastal feature? Do they have permits from the Town, DEM & CRMC like all residents must acquire when living by the shore? How has the DEM/CRMC approved dumping arsenic and benzene less than 200 feet from a coastal feature?

It is one thing to try to fix an old problem by sealing off an old dump site with clay so there is no seepage into the delicate estuary on Boyd's Lane and quite another to allow an unnamed company to carry out the procedure with seemingly no supervision.

Sincerely,

Pamela Benjamin
401-864-2207

Sent from my Sprint Samsung Galaxy S7